

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LEMA ARMSTEAD,

Plaintiff,

v.

P. SCHULTZ, et.al.,

Defendants.

1: 05 CV F-0212 OWW DLB P

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. sec. 1983. Pending before the Court is Plaintiff's complaint filed February 15, 2005. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2); 28 U.S.C. § 1915(e)(2). If the court determines that the complaint fails to state a claim, leave to amend may be granted to the extent that the deficiencies of the complaint can be cured by amendment.

1 Lopez v. Smith, 203 F.3d 1122 (9th Cir. 2000) (en banc).

2 Plaintiff names P. Schultz, Warden at Atwater State Prison as the only defendant in this
3 action. Plaintiff alleges that on June 14, 2004, he suffered a seizure during the night and fell out of
4 his upper bunk. He alleges that he suffered a pinched nerve as a result of the fall. Plaintiff contends
5 that his injury was the result of deliberate indifference on the part of prison staff because he has an
6 epileptic condition and therefore the medical department gave an upper bunk order with which unit
7 staff failed to comply. Plaintiff seeks punitive damages.

8 Plaintiff's allegations are insufficient to state a cognizable claim against Warden Schultz who
9 is the only named defendant. Supervisory personnel are generally not liable under section 1983 for
10 the actions of their employees under a theory of respondeat superior and, therefore, when a named
11 defendant holds a supervisory position, the causal link between him and the claimed constitutional
12 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);
13 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). To show a
14 prima facie case of supervisory liability, plaintiff must allege facts indicating that supervisory
15 defendants either: personally participated in the alleged deprivation of constitutional rights; knew of
16 the violations and failed to act to prevent them; or promulgated or implemented a policy "so
17 deficient that the policy itself is a repudiation of constitutional rights" and is "the moving force of the
18 constitutional violation." Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989); Taylor v. List, 880
19 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff has failed to allege that Warden Shultz had any
20 participation in his bunk assignment or that he even knew of the action. Because plaintiff has failed
21 to state a claim against Warden Schultz, the only named defendant, the complaint must be dismissed
22 in its entirety. The Court will, however, grant leave to file an amended complaint to explain the
23 claim in more detail. In doing so, plaintiff should keep in mind the following legal standards:

24 **Medical Care**

25 A prisoner's claim of inadequate medical care does not constitute cruel and unusual
26 punishment unless the mistreatment rises to the level of "deliberate indifference to serious medical
27 needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976). The "deliberate indifference" standard involves
28

1 an objective and a subjective prong. First, the alleged deprivation must be, in objective terms,
 2 “sufficiently serious.” Farmer v. Brennan, 511 U.S. 825, 834 (1994) (citing Wilson v. Seiter, 501
 3 U.S. 294, 298 (1991)). Second, the prison official must act with a “sufficiently culpable state of
 4 mind,” which entails more than mere negligence, but less than conduct undertaken for the very
 5 purpose of causing harm. Farmer v. Brennan, 511 U.S. at 837. A prison official does not act in a
 6 deliberately indifferent manner unless the official “knows of and disregards an excessive risk to
 7 inmate health or safety.” Id.

8 In applying this standard, the Ninth Circuit has held that before it can be said that a prisoner's
 9 civil rights have been abridged, "the indifference to his medical needs must be substantial. Mere
 10 'indifference,' 'negligence,' or 'medical malpractice' will not support this cause of action." Broughton
 11 v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980), citing Estelle, 429 U.S. at 105-06. “[A]
 12 complaint that a physician has been negligent in diagnosing or treating a medical condition does not
 13 state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does
 14 not become a constitutional violation merely because the victim is a prisoner.” Estelle v. Gamble,
 15 429 U.S. at 106; see also Anderson v. County of Kern, 45 F.3d 1310, 1316 (9th Cir. 1995);
 16 McGuckin v. Smith, 974 F.2d 1050, 1050 (9th Cir. 1992), overruled on other grounds, WMX Techs.,
 17 Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997)(en banc). Even gross negligence is insufficient to
 18 establish deliberate indifference to serious medical needs. See Wood v. Housewright, 900 F.2d
 19 1332, 1334 (9th Cir. 1990). A prisoner’s mere disagreement with diagnosis or treatment does not
 20 support a claim of deliberate indifference. Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989).

21 Deliberate indifference can be manifested by prison guards intentionally denying or delaying
 22 access to medical care or intentionally interfering with the treatment once prescribed. Estelle v.
 23 Gamble, 429 U.S. at 104-05. However, where a prisoner alleges a delay in receiving medical
 24 treatment, the prisoner must allege that the delay led to further injury. McGuckin v. Smith, 974 F.2d
 25 1050, 1060 (9th Cir. 1992), overruled on other grounds, WMX Techs, Inc. v. Miller, 104 F.3d 1133,
 26 1136 (9th Cir. 1997); Shapely v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir.
 27 1985).

1 Although neither a physician's negligence nor a prisoner's disagreement with a particular
2 course of treatment states a claim for deliberate indifference, a prison medical staff's acts or
3 omissions will constitute deliberate indifference if staff members knew of and disregarded an
4 excessive risk to an inmate's health. Farmer v. Brennan, 511 U.S. at 837. Prison officials are
5 deliberately indifferent to a prisoner's serious medical needs when they "interfere with treatment
6 once prescribed." Estelle v. Gamble, 429 U.S. at 104-05. The Ninth Circuit has found deliberate
7 indifference where prison officials "deliberately ignore the express orders of a prisoner's prior
8 physician for reasons unrelated to the medical needs of the prisoner." Hamilton v. Endell, 981 F.2d
9 1062, 1066 (9th Cir. 1992)(reversing summary judgment where prison officials forced prisoner to
10 endure a plane flight that resulted in ear injury, in direct contravention of a treating physician's
11 previous orders); Ortiz v. City of Imperial, 884 F.2d 1312, 1314 (9th Cir. 1989)(per
12 curium)(reversing summary judgment where medical staff knew that pretrial detainee had head
13 injury, but prescribed contraindicated medications, disregarding evidence of complications to which
14 they had been specifically alerted by private treating physician); Tolbert v. Eyman, 434 F.2d 625 (9th
15 Cir. 1970)(finding cognizable claim for deliberate indifference where warden refused to authorize
16 prisoner's receipt of medicine that had been previously prescribed by a physician); Cf. McGuckin v.
17 Smith, 974 F.2d 1050, 1062 (9th Cir. 1992)(where surgery recommended by prisoner's prior
18 physician was severely delayed, court was unable hold doctors liable because prison administrators,
19 not the doctors, were responsible for scheduling treatment).

20 The Courts of other federal Circuits have also found deliberate indifference where prison
21 officials ignore a previous physician's treatment plan. White v. Napoleon, 897 F.2d 103 (3rd Cir.
22 1990)(finding cognizable claim for deliberate indifference where prison officials ignored private
23 hospital's treatment orders and refused inmate's access to prescribed medication); Gill v. Mooney,
24 824 F.2d 192 (2nd Cir. 1987)(finding cognizable claim where prison officials refused to permit
25 plaintiff to participate in exercise program prescribed by doctor); Eades v. Thompson, 823 F.2d 1055
26 (7th Cir. 1987)(finding cognizable claim where prisoner alleged that prison officials made him travel
27 and carry a heavy box, causing a surgical incision to gape open, in violation of prior medical orders);
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1 Martinez v. Mancusi, 443 F.2d 921 (2nd Cir. 1970), cert. denied 401 U.S. 983, cited with approval
 2 by Estelle v. Gamble, 429 U.S. at 105 n.10 (finding deliberate indifference where prison staff forced
 3 post-surgical prisoner-patient to walk, ignoring warnings from hospital personnel that inmate should
 4 not be moved); see also Carl T. Drechsler, Annotation, Relief Under Federal Civil Rights Acts to
 5 State Prisoners Complaining of Denial of Medical Care, 28 A.L.R. Fed. 279 (1976)(recognizing that,
 6 on the whole, courts do not condone the practice of prison officials ignoring orders rendered by a
 7 prisoner's previous physician).

8 **Leave to Amend**

9 In summary, the Court finds it necessary to dismiss the complaint in its entirety. The Court
 10 will grant plaintiff an opportunity to amend to cure the deficiencies of this complaint. Failure to cure
 11 the deficiencies will result in dismissal of this action without leave to amend.

12 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
 13 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v. Cassidy,
 14 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how each named
 15 defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there is some
 16 affirmative link or connection between a defendant's actions and the claimed deprivation. Rizzo v.
 17 Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy,
 18 588 F.2d 740, 743 (9th Cir. 1978).

19 In addition, plaintiff is informed that the Court cannot refer to a prior pleading in order to
 20 make plaintiff's amended complaint complete. Local Rule 15-220 requires that an amended
 21 complaint be complete in itself without reference to any prior pleading. This is because, as a
 22 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d
 23 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer
 24 serves any function in the case. Therefore, in an amended complaint, as in an original complaint,
 25 each claim and the involvement of each defendant must be sufficiently alleged.

26 In accordance with the above, IT IS HEREBY ORDERED that:

- 27 1. Plaintiff's complaint is dismissed;

1 2. The Clerk's Office shall send plaintiff a complaint form; and

2 3. Plaintiff is granted thirty days from the date of service of this order to file an
3 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of
4 Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the docket
5 number assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original
6 and two copies of the amended complaint; failure to file an amended complaint in accordance with
7 this order will result in dismissal of this action for failure to state a claim and failure to comply with
8 the court's order.

9 IT IS SO ORDERED.

10 **Dated: June 10, 2005**
11 3b142a

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE